

CITY OF OAKLAND

Revised Audit Report

PEACE OFFICERS PROCEDURAL BILL OF RIGHTS PROGRAM

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178,
Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980;
Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983;
Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990

July 1, 2001, through June 30, 2004



JOHN CHIANG
California State Controller

October 2007



JOHN CHIANG
California State Controller

October 5, 2007

William Noland, Director
Finance and Management Agency
City of Oakland
150 Frank Ogawa Plaza, Suite 8333
Oakland, CA 94612

Dear Mr. Noland:

The State Controller's Office (SCO) audited the costs claimed by the City of Oakland for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2001, through June 30, 2004.

This revised final report supersedes the previously issued final report dated May 30, 2007. This revised final report corrects the SCO's finding and comment in Finding 2 related to the review of complaints by police department command staff and/or legal counsel. The correction notes our concurrence with the city that these activities are reimbursable. The revision did not change the audit results.

The city claimed \$3,497,273 for the mandated program. Our audit disclosed that \$1,187 is allowable and \$3,496,086 is unallowable. The unallowable costs occurred because the city claimed ineligible and unsupported costs. The State paid the city \$31. The State will pay allowable costs claimed that exceed the amount paid, totaling \$1,156, contingent upon available appropriations.

For the unsupported costs, if the city subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities and the number of activities performed, we will revise the final report as appropriate.

If you disagree with the audit findings, you may file an Incorrect Reduction Claim (IRC) with the Commission on State Mandates (CSM). The IRC must be filed within three years following the date that we notify you of a claim reduction. You may obtain IRC information at CSM's Web site, at www.csm.ca.gov (Guidebook link); you may obtain IRC forms by telephone, at (916) 323-3562, or by e-mail, at csminfo@csm.ca.gov.

If you have any questions, please contact Jim L. Spano, Chief, Mandated Cost Audits Bureau, at (916) 323-5849.

Sincerely,

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

JVB/jj:wm:vb

cc: Peter Fitzsimmons
Administrative Services Manager II
City of Oakland
Ace Tago, Assistant Controller
City of Oakland
Todd Jerue, Program Budget Manager
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Revised Audit Report

Summary

The State Controller's Office (SCO) audited the costs claimed by the City of Oakland for the legislatively mandated Peace Officers Procedural Bill of Rights Program (Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990) for the period of July 1, 2001, through June 30, 2004. The last day of fieldwork was December 14, 2005.

The city claimed \$3,497,273 for the mandated program. Our audit disclosed that \$1,187 is allowable and \$3,496,086 is unallowable. The unallowable costs occurred because the city claimed ineligible and unsupported costs. The State paid the city \$31. The State will pay allowable costs claimed that exceed the amount paid, totaling \$1,156, contingent upon available appropriations.

Background

Chapter 465, Statutes of 1976; Chapters 775, 1173, 1174, and 1178, Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980; Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983; Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990 added and amended Government Code sections 3300 through 3310. This legislation, known as the Peace Officers Procedural Bill of Rights (POBOR) was enacted to ensure stable employer-employee relations and effective law enforcement services.

This legislation provides procedural protections to peace officers employed by local agencies and school districts when a peace officer is subject to an interrogation by the employer, is facing punitive action, or receives an adverse comment in his or her personnel file. The protections apply to peace officers classified as permanent employees, peace officers who serve at the pleasure of the agency and are terminable without cause ("at will" employees), and peace officers on probation who have not reached permanent status.

On November 30, 1999, the Commission on State Mandates (CSM) determined that this legislation imposed a state mandate reimbursable under Government Code section 17561 and adopted the statement of decision. CSM determined that the peace officer rights law constitutes a partially reimbursable state mandated program within the meaning of the California Constitution, Article XIII B, Section 6, and Government Code section 17514. CSM further defined that activities covered by due process are not reimbursable.

The program's parameters and guidelines establish the state mandate and define reimbursement criteria. CSM adopted the parameters and guidelines on July 27, 2000, and corrected them on August 17, 2000. The parameters and guidelines categorize reimbursable activities into the four following components: Administrative Activities, Administrative

Appeal, Interrogation, and Adverse Comment. In compliance with Government Code section 17558, the SCO issues claiming instructions for mandated programs, to assist local agencies in claiming reimbursable costs.

Objective, Scope, and Methodology

We conducted the audit to determine whether costs claimed represent increased costs resulting from the Peace Officers Procedural Bill of Rights Program for the period of July 1, 2001, through June 30, 2004.

Our audit scope included, but was not limited to, determining whether costs claimed were supported by appropriate source documents, were not funded by another source, and were not unreasonable and/or excessive.

We conducted the audit according to *Government Auditing Standards*, issued by the Comptroller General of the United States, and under the authority of Government Code sections 12410, 17558.5, and 17561. We did not audit the city's financial statements. We limited our audit scope to planning and performing audit procedures necessary to obtain reasonable assurance that costs claimed were allowable for reimbursement. Accordingly, we examined transactions, on a test basis, to determine whether the costs claimed were supported.

We limited our review of the city's internal controls to gaining an understanding of the transaction flow and claim preparation process as necessary to develop appropriate auditing procedures.

We asked the city's representative to submit a written representation letter regarding the city's accounting procedures, financial records, and mandated cost claiming procedures as recommended by *Government Auditing Standards*. However, the city did not submit a representation letter.

Conclusion

Our audit disclosed instances of noncompliance with the requirements outlined above. These instances are described in the accompanying Summary of Program Costs (Schedule 1) and in the Findings and Recommendations section of this report.

For the audit period, the City of Oakland claimed \$3,497,273 for costs of the Peace Officers Procedural Bill of Rights Program. Our audit disclosed that \$1,187 is allowable and \$3,496,086 is unallowable. The State paid the city \$31. The State will pay allowable costs claimed that exceed the amount paid, totaling \$1,156, contingent upon available appropriations.

For the unsupported costs, if the city subsequently provides corroborating evidence to support the time it takes to perform individual reimbursable activities and the number of activities performed, we will revise the final report as appropriate.

**Views of
Responsible
Official**

We issued a draft audit report on February 27, 2007. William Noland, Director, Finance and Management Agency, responded by letter dated April 11, 2007 (Attachment), agreeing with the audit results for Findings 3 and 4, and disagreeing with the results for Findings 1 and 2. We issued the final report on May 30, 2007. This revised report corrects the SCO's finding and comment in Finding 2 related to the review of complaints by police department command staff and/or legal counsel. The correction notes our concurrence with the city that these activities are reimbursable. The audit adjustments remain unchanged. We advised Ace Tago, Acting Controller, of the revisions on August 27, 2007.

Restricted Use

This report is solely for the information and use of the City of Oakland, the California Department of Finance, and the SCO; it is not intended to be and should not be used by anyone other than these specified parties. This restriction is not intended to limit distribution of this report, which is a matter of public record.

Original signed by

JEFFREY V. BROWNFIELD
Chief, Division of Audits

Schedule 1— Summary of Program Costs July 1, 2001, through June 30, 2004

Cost Elements	Actual Costs Claimed	Allowable per Audit	Audit Adjustment	Reference ¹
<u>July 1, 2001, through June 30, 2002</u>				
Salaries	\$ 629,829	\$ —	\$ (629,829)	Findings 1, 2
Benefits	316,764	—	(316,764)	Findings 1, 2
Total direct costs	946,593	—	(946,593)	
Indirect costs	132,264	—	(132,264)	Findings 1, 2
Total program costs	<u>\$ 1,078,857</u>	—	<u>\$(1,078,857)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>		
<u>July 1, 2002, through June 30, 2003</u>				
Salaries	\$ 724,418	\$ 405	\$ (724,013)	Findings 1, 2, 3
Benefits	365,831	205	(365,626)	Findings 1, 2, 3, 4
Travel and training	490	490	—	
Total direct costs	1,090,739	1,100	(1,089,639)	
Indirect costs	154,815	87	(154,728)	Findings 1, 2, 3, 4
Total program costs	<u>\$ 1,245,554</u>	1,187	<u>\$(1,244,367)</u>	
Less amount paid by the State		(31)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 1,156</u>		
<u>July 1, 2003, through June 30, 2004</u>				
Salaries	\$ 563,401	\$ —	\$ (563,401)	Findings 1, 2
Benefits	433,931	—	(433,931)	Findings 1, 2, 4
Total direct costs	997,332	—	(997,332)	
Indirect costs	175,530	—	(175,530)	Findings 1, 2, 4
Total program costs	<u>\$ 1,172,862</u>	—	<u>\$(1,172,862)</u>	
Less amount paid by the State		—		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ —</u>		
<u>Summary: July 1, 2001 through June 30, 2004</u>				
Salaries	\$ 1,917,648	\$ 405	\$(1,917,243)	Findings 1, 2, 3
Benefits	1,116,526	205	(1,116,321)	Findings 1, 2, 3, 4
Travel and training	490	490	—	
Total direct costs	3,034,664	1,100	(3,033,564)	
Indirect costs	462,609	87	(462,522)	Findings 1, 2, 3, 4
Total program costs	<u>\$ 3,497,273</u>	1,187	<u>\$(3,496,086)</u>	
Less amount paid by the State		(31)		
Allowable costs claimed in excess of (less than) amount paid		<u>\$ 1,156</u>		

¹ See the Findings and Recommendations section.

Schedule 1 (continued)

	Actual Costs Claimed	Allowable per Audit	Audit Adjustment
<u>Summary by Cost Components</u>			
Administrative activities	\$ 1,187	\$ 1,187	\$ —
Interrogation	1,336,032	—	(1,336,032)
Adverse comment	<u>2,160,054</u>	<u>—</u>	<u>(2,160,054)</u>
Total program costs	<u>\$ 3,497,273</u>	<u>\$ 1,187</u>	<u>\$(3,496,086)</u>

Revised Findings and Recommendations

FINDING 1— Unsupported costs based on time study documentation

The city claimed unallowable employee salary and benefit costs totaling \$635,981 for the audit period because its time study documentation for eligible activities was based on estimated costs. Costs claimed for fiscal year (FY) 2001-02 also included ineligible costs that were not segregated from eligible costs. Related indirect costs totaled \$93,737.

The Police Department conducted a time study at the end of each fiscal year during the audit period. The results of the time studies were used as the basis for time claimed in the city's mandate reimbursement claims. The city used one methodology for FY 2001-02 and a separate methodology for FY 2002-03 and FY 2003-04.

For FY 2001-02, the city's mandated cost consultant used average time segment data developed by the Internal Affairs Division from case time logs to calculate the average duration of a case from its inception to completion. The consultant broke down the average hours to complete cases by small, medium, and large cases, and prepared a schedule that showed the percentages of time devoted separately to the Interrogation and Adverse Comment components. Based on these percentages, the consultant calculated the total number of hours spent for each cost category per completed case. The consultant then calculated the total number of hours spent during the year by multiplying the average number of hours per cost component by the number of cases completed during the year. Costs claimed under the Interrogation component were for ineligible activities that are identified in Finding 2. For costs claimed under the Adverse Comment component, the city did not segregate eligible costs from ineligible costs; consequently, costs claimed were unsupported. Furthermore, the log did not break down the amount of time spent by activity and only estimated the amount of time spent for the entire cost center.

For FY 2002-03 and FY 2003-04, the Internal Affairs Division developed average time segment information from case time logs using data from 10-15 completed cases. The logs included descriptions of the activities performed for each cost component and the time estimates for each activity. Based on the average time data for the sample of cases selected, the consultant calculated the number of hours claimed by cost component for cases completed during FY 2002-03. However, for FY 2003-04, instead of using cases completed, it appears that the calculation was based on the number of cases in process during the year. While the city's claim reports that 308 cases were completed during FY 2003-04, an analysis of the claim revealed that the city used 188 cases to calculate claimed costs.

For FY 2002-03 and FY 2003-04, the time study results were flawed because they were not based on actual time data. Instead, the time segments recorded to perform the various activities were based on the Investigating Sergeants' recollections of how long each activity took to perform. The city did not provide any source documents to corroborate the time estimates. The time studies included time spent performing activities that are not reimbursable under the mandated program. The

city did separately record time increments for eligible and ineligible activities. The city developed the average number of hours per case from the estimated costs for eligible and ineligible activities. The ineligible costs are identified in Finding 2. The unsupported costs are identified in this finding. In addition, the city did not support its contention that the cases selected by the city for review were representative of the population.

We also noted that the number of eligible cases included in each year's claim was misstated. For FY 2001-02, FY 2002-03, and FY 2003-04, the city's claims reported 300 cases, 300 cases, and 308 cases, respectively. During the audit for the same periods, the city provided additional information that it actually completed 315 cases, 310 cases, and 337 cases, respectively, an understatement of 54 cases. In addition, as noted above, the city's claim for FY 2003-04 was based on 188 cases. Because all costs claimed were already determined to be unallowable, we did not confirm the actual number of eligible POBOR cases completed by the city for the audit period.

During the audit exit conference, we advised city representatives that they would be allowed to conduct a time study to determine the amounts of time spent performing eligible activities under the mandated program during the current year. We would then apply the time study results retroactively to the audit period. If the time study results affect the audit adjustments, we agreed to revise the report accordingly. If the city chooses to exercise this option, verification of the actual number of eligible POBOR cases conducted for the audit period will be required.

Following is a summary of the unsupported costs based on the time studies. In addition, for FY 2001-02, costs were not segregated between eligible and ineligible costs.

	Fiscal Year			Total
	2001-02	2002-03	2003-04	
Interrogation and Adverse Comment:				
Salary costs	\$ (225,619)	\$ (112,951)	\$ (78,017)	\$ (416,587)
Benefit costs	(113,487)	(60,135)	(45,772)	(219,394)
Subtotal	(339,106)	(173,086)	(123,789)	(635,981)
Indirect costs	(47,380)	(24,577)	(21,786)	(93,733)
Audit adjustment	<u>\$ (386,486)</u>	<u>\$ (197,663)</u>	<u>\$ (145,575)</u>	<u>\$ (729,724)</u>

The parameters and guidelines for POBOR, adopted by the Commission on State Mandates (CSM) on July 27, 2000, define the criteria for procedural protections for the county's peace officers. The parameters and guidelines, Section IV, Reimbursable Activities, outline specific tasks that are deemed above the due process clause. The statement of decision on which the parameters and guidelines was based noted that due process activities were not reimbursable.

The parameters and guidelines, Section VA1, Salaries and Benefits, require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee.

The parameters and guidelines, Section VI, Supporting Data, require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state mandated program.

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

City's Response

Reasonability

Given the size of the City of Oakland's Police Department, and the number of internal affairs cases that the Department processes each year, it is reasonable to expect that the City will have a significant number of cases that fall under the Peace Officer Procedural Bill of Rights Program (POBARs), and indeed it does. Every fiscal year, the City of Oakland applies the Peace Officer Procedural Bill of Rights standards to hundreds of cases. And yet, the State Controller's draft audit findings show that only \$1,187 of the \$3,497,273 is reimbursable due to a variety of factors, including:

- Insufficient documentation
- Ineligible activities
- Overstated productive hourly rates
- Misstated benefit rates

If the State Controller disagrees with the City's methodology for claiming costs several years after the fact, it must certainly admit that some reasonable method must exist to account for some of the costs of running this highly sensitive program each year. That cost is certainly much higher than \$1,187 over the course of three fiscal years for an agency the size of Oakland.

The POBARs Mandate was Performed by Oakland

The State has historically stated that local agencies must show evidence that the mandate was performed, and indeed, Oakland has provided the State Controller with numerous documents showing that POBAR rights are recognized by the City and care is given to ensure that each sworn officer receives the level of protection that the State of California has mandated.

Since there is no dispute over performance of the mandate, it is clear that the City of Oakland is entitled to reimbursement for some reasonable level of costs incurred performing this program.

Documentation Standards

In the draft report, the State Controller took issue with the type and method of documentation provided by the City of Oakland for the POBAR services. While the State Controller is entitled to its opinion related to documentation developed by the City, it is indisputable that the City performed time studies each year in an attempt to fairly capture the staff time and costs associated with the mandated aspects of

the POBAR program, and that the City submitted claims to the State Controller on an annual basis for the entire audit period using this methodology. For five years, the State Controller received these claims and at no time questioned the time study methodology used by the Oakland Police Department.

Furthermore, the State Controller did not have time study guidelines available to local agencies until 2005. To the best of its ability, the City of Oakland complied with the State Controller's claiming instructions for this program and did use contemporaneous information and data as the basis for the claims it filed.

The City of Oakland believes that it is unfair for the State Controller to retroactively reject the Police Department's time study methodology in 2007, which effectively wipes out the City's claims going back to 2001. The Department would be more than happy to craft a methodology prospectively based on input from the State Controller for tracking staff times and costs, however, the State Controller had six years to inform the City that it disagreed with its method of tracking time and failed to do so. To argue otherwise exposes the futility of the State's claiming system, the unfair audit standards employed by the State Controller's Office, and flies in the face of Article XIII B, Section 6 of the State Constitution.

SCO's Comment

The finding and recommendation remains unchanged.

The city claims in its response that our audit employed unfair audit standards and is basically in violation of the provisions of the State Constitution. The city did not provide the SCO with any evidence supporting its contention. The SCO auditors conducted the audit in accordance *Government Auditing Standards*. These standards include the provision that auditors obtain sufficient, competent, and relevant evidence to afford a reasonable basis for their findings and conclusions, and the auditors did so.

The city also states that the SCO did not inform the city in a timely manner that there were problems with its time study methodology, having had six years in which to do so. This is our first audit of the city's POBOR claims during that six-year period. In addition, the city did not provide with its claims any details of its time study methodology with which our office could make a determination as to the validity of the methodology the city used. The city did not contact our office at any time during the aforementioned six-year period to ascertain whether or not its time study methodology was valid. The statement that the SCO is now precluded from taking an audit finding on the city's time study methodology after it performed an audit of the city's claims is not valid.

We concur that the city performed time studies each year in an attempt to capture costs, and it performed reimbursable activities under the mandated program. However, the city did not mention in its response that the supporting documentation for its time studies was based entirely on estimates, which themselves were based on recollections of its staff as to how long the staff took to perform certain activities. Accordingly, we were unable to determine the extent of reimbursable activities performed

based on the evidence, or lack of evidence, provided by the city. The city's statement that it used contemporaneous information and data to support its claims is inconsistent with the information the city provided to our auditors during the course of the audit. The city did not provide any source documents or corroborating evidence supporting actual costs incurred.

The city has been provided the option of conducting a valid time study during the current fiscal period, the results of which could then be applied retroactively to the audit period. We noted this option during the audit exit conference held on December 14, 2005, and again in the draft audit report dated February 27, 2007. This final report also notes this option. To date, the city has not contacted our office to take advantage of this time study option. The city's statement that it is *entitled* to a "reasonable" level of reimbursement of costs incurred during the audit period is valid if it can support such costs with source documents showing evidence of the validity of such costs and their relationship to the state mandated program. To date, the city has not provided our office with such support.

FINDING 2— Ineligible activities claimed

The city claimed unallowable salary and benefit costs totaling \$2,378,086 for the audit period because activities were claimed that are not identified in the parameters and guidelines as reimbursable costs. Related indirect costs totaled \$365,523.

Following is a summary of the ineligible costs.

	Fiscal Year			
	2001-02	2002-03	2003-04	Total
Salary costs:				
Interrogations:				
Pre-interrogation	\$(268,839)	\$ —	\$ —	\$ (268,839)
Interrogation activities	(135,371)	(199,271)	(144,672)	(479,314)
Total interrogations	<u>(404,210)</u>	<u>(199,271)</u>	<u>(144,672)</u>	<u>(748,153)</u>
Adverse comment:				
Pre-interrogation	—	(299,597)	(279,766)	(579,363)
Prepare case summary reports and conduct final case reviews	—	(106,695)	(60,946)	(167,641)
Total adverse comment	<u>—</u>	<u>(406,292)</u>	<u>(340,712)</u>	<u>(747,004)</u>
Total salary costs	<u>(404,210)</u>	<u>(605,563)</u>	<u>(485,384)</u>	<u>(1,495,157)</u>
Benefit costs	<u>(203,277)</u>	<u>(305,809)</u>	<u>(373,843)</u>	<u>(882,929)</u>
Subtotal	<u>(607,487)</u>	<u>(911,372)</u>	<u>(859,227)</u>	<u>(2,378,086)</u>
Related indirect costs	<u>(84,884)</u>	<u>(129,415)</u>	<u>(151,224)</u>	<u>(365,523)</u>
Audit adjustment	<u>\$(692,371)</u>	<u>\$(1,040,787)</u>	<u>\$(1,010,451)</u>	<u>\$(2,743,609)</u>

Interrogations

The parameters and guidelines state that specific identified Interrogation activities are reimbursable when a peace officer is under investigation or becomes a witness to an incident under investigation, and is subjected to an interrogation by the commanding officer or any other member of the employing public safety department during off-duty time, if the interrogation could lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment. Section IV(C), Interrogation, identifies reimbursable activities under compensation and timing of an interrogation, interrogation notice, tape recording of an interrogation, and documents provided to the employee.

The parameters and guidelines, Section IV(C), state that claimants are not eligible for Interrogation activities when an interrogation of a peace officer is in the normal course of duty. It further states:

When required by the seriousness of the investigation, compensating the peace officer for interrogations occurring during off-duty time in accordance with regular department procedures.

In reference to compensation and timing of the interrogation pursuant to Government Code section 3303, subdivision (a), the CSM Final Staff Analysis to the adopted parameters and guidelines states:

It does not require local agencies to investigate an allegation, prepare for the interrogation, conduct the interrogation, and review the responses given by the officers and/or witnesses, as implied by the claimant's proposed language. Certainly, local agencies were performing these investigative activities before POBAR [sic] was enacted.

The parameters and guidelines, Section IV(C), also state that the following activity is reimbursable.

Tape recording the interrogation when the peace officer employee records the interrogation.

However, the city claimed the following ineligible activities.

- Pre-interrogation meetings to discuss the nature of the interrogations with the subjects and their representatives;
- Interrogation of witnessing or accused officers during normal duty hours;
- Interrogators' time to conduct interrogations;
- Travel related to off-site interrogations during on-duty time; and
- Tape reviews and corrections.

Adverse Comment

Depending on the circumstances surrounding an Adverse Comment, Parameters and Guidelines, Section IV(b), allow some or all of the following four activities upon receipt of an Adverse Comment: providing notice of the adverse comment; providing an opportunity to review and sign the adverse comment; providing an opportunity to respond to the adverse comment within 30 days; and noting on the document the peace officer's refusal to sign the adverse comment and obtaining the signature or initials of the peace officer under such circumstances.

The parameters and guidelines, Section IV(b), also state that:

...included in the foregoing are review of circumstances or documentation leading to adverse comment by supervisor, command staff, human resources staff or counsel, including determination of whether same constitutes an advance comment, preparation of comment and review for accuracy; notification and presentation of adverse comment to officer and notification concerning rights regarding same; review of response to adverse comment, attaching same to adverse comment and filing.

However, the city claimed the following ineligible activities.

- Gathering reports, log sheets, and evidence;
- Reviewing evidence prior to interrogations;
- Preparing questions for interrogations; and
- Preparing case summary reports and conducting final reviews of completed cases.

The parameters and guidelines for POBOR, adopted by the CSM on July 27, 2000, define the criteria for procedural protections for the county's peace officers. The parameters and guidelines, Section IV, Reimbursable Activities, outline specific tasks that are deemed above the due-process clause. The statement of decision on which parameters and guidelines was based noted that due-process activities were not reimbursable.

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

City's Response

Adverse Comment

In its analysis of the Parameters and Guidelines for this program, the State Controller appeared to misunderstand or misstate the activities claimed by the City in the Adverse Comments section of the 2000 version of the Ps and Gs. The key aspect of costs for this component from the City's perspective is in the review of circumstances to determine if a complaint rises to the level of an adverse comment. In

the 2007 undated version of the Ps and Gs for this program, the Commission of State Mandates agrees with the city's perspective and provides the following guidance:

The following adverse comment activities are reimbursable:

1. Review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel to determine whether the comment constitutes a written reprimand or an adverse comment.
2. Preparation of notice of adverse comment.
3. Review of notice of adverse comment for accuracy.
4. Informing the peace officer about the officer's rights regarding the notice of adverse comment.
5. Review of peace officer's response to adverse comment.
6. Attaching the peace officers' response to the adverse comment and filing the document in the appropriate file.

The following activities are not reimbursable:

1. Investigating a complaint.
2. Interviewing a complainant.
3. Preparing a complaint investigation report.

When the Police Department receives a complaint involving an officer, the complaint must be reviewed by several layers of supervisors and, in some cases, legal counsel, to determine if the circumstances and graveness of the situation elevate the complaint to the status of an "adverse comment." This is important for several reasons. First, complaints do not lead disciplinary action for a police officer, but an adverse comment could. Secondly, adverse comments become part of the officer's permanent file, and this could affect their future standing with the department as it relates to promotions, transfers or other staff assignments. This level of specificity and review only occurs with sworn officers and is specifically performed by the Police Department as a result of POBARs. Time spent in investigations and investigation reports is not an eligible aspect of this mandate and was not claimed as such by the City.

The City hopes that this clarification of the City's process, as well as how it meshes with the Ps and Gs for this program will provide a satisfactory basis for the restoration of the \$747,004 eliminated from the Adverse Comments section in the draft audit report.

SCO's Comment

The finding and recommendation remains unchanged, with the exception of clarifying reimbursable Adverse Comment activities.

For the Interrogations cost component, the city did not comment on ineligible activities claimed.

For the Adverse Comment cost component, the city states that we misunderstood the activities it claimed and describes why it believes that the activities it performs are consistent with the parameters and guidelines. The city also quotes the definition of reimbursable activities under the cost component of Adverse Comment from amended the parameters and guidelines adopted on December 4, 2006, which are

applicable for reimbursable activities performed beginning on July 1, 2006. The city then states that \$747,004 included in this audit finding under Adverse Comment should be restored, based on what it believes was our misunderstanding.

We concur that reviewing a complaint filed against a peace officer by Police Department command staff and/or legal counsel is a reimbursable activity under the cost component of Adverse Comment. However, as noted in Finding 1, the city improperly claimed estimated costs rather than actual costs.

**FINDING 3—
Overstated productive
hourly rates claimed**

For FY 2002-03, the city claimed unallowable costs totaling \$8,276 due to overstated productive hourly rates. The related indirect costs totaled \$1,175. The city overstated productive hourly rates because the employee classifications used to calculate the rates were for employees that did not perform mandate-related activities. The city used employee classifications PS178 for sergeants and PS167 for police officers, instead of using classifications PS179 (PERS) for sergeants and PS168 (PERS) for police officers. The rates were overstated by \$2.35 for sergeants and \$3.64 for police officers. The finding for police officers is immaterial based on the total number of hours claimed.

For FY 2001-02, the rates were overstated by \$2.21 for sergeants and \$1.65 for police officers. However, the total costs claimed were already unallowable in Findings 1 and 2.

For FY 2003-04, productive hourly rates for sergeants were overstated by \$0.06 for FY 2003-04, which is immaterial.

Following is summary of the adjustment due to overstated productive hourly rate for sergeants during FY 2002-03.

	Fiscal Year 2002-03
Interrogation and adverse comment:	
Productive hourly rate adjustment	\$ (2.35)
Allowable hours	× 2,340
Unallowable salary costs	(5,499)
Benefit costs	(2,777)
Subtotal	(8,276)
Related indirect costs	(1,175)
Audit adjustment	<u>\$ (9,451)</u>

The parameters and guidelines, Section VA1, Salaries and Benefits, require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, Section VI, Supporting Data, require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state-mandated program.

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

City's Response

The city agrees with this finding.

**FINDING 4—
Misstated employee
benefit rates claimed**

The city overstated employee benefit costs by \$11,221. Related indirect costs totaled \$2,081.

The misstatements occurred because the city understated fringe benefit rates by 2.73% for FY 2002-03 and overstated fringe benefit rates by 18.35% for FY 2003-04. The allowable benefit rates were verified to the city's schedules of negotiated rates for bargaining units UN1 and PP1, as outlined in the City of Oakland Administrative Instructions. The city also overstated the employee benefit rate by 0.01% for FY 2001-02, which is immaterial.

Following is a summary of the understated (overstated) costs related to misstated fringe benefit rates.

	Fiscal Year		Total
	2002-03	2003-04	
Interrogation and adverse comment:			
Salary costs claimed	\$ 724,418	\$ 563,401	
Less unallowable costs, Finding 1	(605,563)	(485,384)	
Less unallowable costs, Finding 4	(5,499)	—	
Subtotal	113,356	78,017	
Benefit rate adjustment	× 2.73%	× (18.35)%	
Total benefit costs	3,095	(14,316)	\$ (11,221)
Related indirect costs	439	(2,520)	(2,081)
Audit adjustment	\$ 3,534	\$ (16,836)	\$ (13,302)

The parameters and guidelines, Section VA1, Salaries and Benefits, require that the claimants identify the employees and/or show the classification of the employees involved, describe the reimbursable activities performed, and specify the actual time devoted to each reimbursable activity by each employee, the productive hourly rate, and related employee benefits.

The parameters and guidelines, Section VI, Supporting Data, require that all costs be traceable to source documents showing evidence of the validity of such costs and their relationship to the state mandated program.

Recommendation

We recommend that the county establish and implement procedures to ensure that claimed costs include only eligible costs, are based on actual costs, and are properly supported.

City's Response

The city agrees with this finding.

**Attachment—
City's Response to
Draft Audit Report**

CITY OF OAKLAND



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Finance & Management Agency
William E. Noland
Director

(510) 238-2220
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April 11, 2007

Mr. Jim L. Spano
Chief of Compliance Audits Bureau
State Controller's Office, Division of Audits
P.O. Box 942850
Sacramento, CA 94250-5874

Dear Mr. Spano:

The City of Oakland has received the State Controller's draft audit findings for the Peace Officer Bill of Rights state mandated cost program. The City appreciates the opportunity to respond to the audit, however, we do not agree with a substantial number of the findings contained within this document.

Our comments and arguments are attached. Please contact me or Ace A. Tago, Acting Controller, at (510) 238-3916 if you have any questions.

Sincerely,

A handwritten signature in dark ink, appearing to be 'W. Noland', written over a large, faint rectangular box.

William Noland
Director, Finance and Management Agency

Cc: Ace A. Tago, Acting Controller
Osborn Solitei, Financial Analyst
Peter Fitzsimmons, OPD Fiscal

City of Oakland

Response to State Controller's Draft Audit Findings

Peace Officers Procedural Bill of Rights Program

Chapter 465, Statutes of 1976, 1173, 1174, and 1178
Statutes of 1978; Chapter 405, Statutes of 1979; Chapter 1367, Statutes of 1980;
Chapter 994, Statutes of 1982; Chapter 964, Statutes of 1983;
Chapter 1165, Statutes of 1989; and Chapter 675, Statutes of 1990.
Period of Audit: July 1, 2001 through June 30, 2004

General Discussion

Article XIII B, Section 6a of the California Constitution imposes a requirement on the State to reimburse local government for the cost of performing state mandated programs:

Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service

It is abundantly evident through the plain reading of this text that the onus of paying for state mandates is on the State.

Reasonability

Given the size of the City of Oakland's Police Department, and the number of internal affairs cases that the Department processes each year, it is reasonable to expect that the City will have a significant number of cases that fall under the Peace Officer Procedural Bill of Rights Program (POBARs), and indeed it does. Every fiscal year, the City of Oakland applies the Peace Officer Procedural Bill of Rights standards to hundreds of cases. And yet, the State Controller's draft audit findings show that only \$1,187 of the \$3,497,273 is reimbursable due to a variety of factors, including:

- Insufficient documentation
- Ineligible activities
- Overstated productive hourly rates
- Misstated benefit rates

If the State Controller disagrees with the City's methodology for claiming costs several years after the fact, it must certainly admit that some reasonable method must exist to account for some of the costs of running this highly sensitive program each year. That cost is certainly much higher than \$1,187 over the course of three fiscal years for an agency the size of Oakland.

The POBARs Mandate was Performed by Oakland

The State has historically stated that local agencies must show evidence that the mandate was performed, and indeed, Oakland has provided the State Controller with numerous documents showing that POBAR rights are recognized by the City and care is given to ensure that each sworn officer receives the level of protection that the State of California has mandated.

Since there is no dispute over performance of the mandate, it is clear that the City of Oakland is entitled to reimbursement for some reasonable level of costs incurred performing this program.

Documentation Standards

In the draft report, the State Controller took issue with the type and method of documentation provided by the City of Oakland for the POBAR services. While the State Controller is entitled to its opinion related to documentation developed by the City, it is indisputable that the City performed time studies each year in an attempt to fairly capture the staff time and costs associated with the mandated aspects of the POBAR program, and that the City submitted claims to the State Controller on an annual basis for the entire audit period using this methodology. For five years, the State Controller received these claims and at no time questioned the time study methodology used by the Oakland Police Department.

Furthermore, the State Controller did not have time study guidelines available to local agencies until 2005. To the best of its ability, the City of Oakland complied with the State Controller's claiming instructions for this program and did use contemporaneous information and data as the basis for the claims it filed.

The City of Oakland believes that it is unfair for the State Controller to retroactively reject the Police Department's time study methodology in 2007, which effectively wipes out the City's claims going back to 2001. The Department would be more than happy to craft a methodology prospectively based on input from the State Controller for tracking staff times and costs, however, the State Controller had six years to inform the City that it disagreed with its method of tracking time and failed to do so. To argue otherwise exposes the futility of the State's claiming system, the unfair audit standards employed by the State Controller's Office, and flies in the face of Article XIII B, Section 6 of the State Constitution.

Adverse Comments

In its analysis of the Parameters and Guidelines for this program, the State Controller appeared to misunderstand or misstate the activities claimed by the City in the Adverse Comments section of the 2000 version of the Ps and Gs. The key aspect of costs for this component from the City's perspective is in the review of circumstances to determine if a complaint rises to the level of an adverse comment. In the 2007 updated version of the Ps and Gs for this program, the Commission on State Mandates agrees with the City's perspective and provides the following guidance:

The following adverse comment activities are reimbursable:

1. Review of the circumstances or documentation leading to the adverse comment by supervisor, command staff, human resources staff, or counsel to determine whether the comment constitutes a written reprimand or an adverse comment.
2. Preparation of notice of adverse comment.
3. Review of notice of adverse comment for accuracy.
4. Informing the peace officer about the officer's rights regarding the notice of adverse comment.
5. Review of peace officer's response to adverse comment.
6. Attaching the peace officers' response to the adverse comment and filing the document in the appropriate file.

The following activities are not reimbursable:

1. Investigating a complaint.
2. Interviewing a complainant.
3. Preparing a complaint investigation report.

When the Police Department receives a complaint involving an officer, the complaint must be reviewed by several layers of supervisors and, in some cases, legal counsel, to determine if the circumstances and graveness of the situation elevate the complaint to the status of an "adverse comment." This is important for several reasons. First, complaints do not lead disciplinary action for a police officer, but an adverse comment could. Secondly, adverse comments become part of the officer's permanent file, and this could affect their future standing with the department as it relates to promotions, transfers or other staff assignments. This level of specificity and review only occurs with sworn officers and is specifically performed by the Police Department as a result of POBARs. Time spent in investigations and investigation reports is not an eligible aspect of this mandate and was not claimed as such by the City.

The City hopes that this clarification of the City's process, as well as how it meshes with the Ps and Gs for this program will provide a satisfactory basis for the restoration of the \$747,004 eliminated from the Adverse Comments section in the draft audit report.

Summary

The City concurs with Findings Three and Four, however, disagrees with the findings and interpretations shown in Findings One and Two. There is no dispute that Oakland performed the Peace Officer Bill of Rights program. It is incumbent upon the State of California to fairly reimburse the City for complying with the mandated program. The City of Oakland would be happy to work cooperatively with the State Controller to arrive at a fair and equitable solution to this matter.

**State Controller's Office
Division of Audits
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Sacramento, CA 94250-5874**

<http://www.sco.ca.gov>